

VOLUNTARY EXPEDITED FILING PROCEDURE
FOR TERRORISM EXCLUSIONS

There has been much uncertainty in the markets for commercial lines property and casualty insurance coverage in light of the substantial losses experienced by the industry on September 11, 2001. Soon after the events, many reinsurers announced that they did not intend to provide coverage for acts of terrorism in future reinsurance contracts. This led to a concerted effort on behalf of all interested parties to seek a temporary federal backstop to calm market fears over future terrorist attacks and the ability of the insurance industry to allocate capital to provide coverage for these unpredictable and potentially catastrophic events. Unfortunately, Congress has been unable to reach agreement on the terms of a temporary federal solution. As a result, state insurance regulators find themselves having to consider approval of certain coverage exclusions for acts of terrorism or risk possible solvency concerns in the insurance industry.

The intent of this Bulletin is to inform insurers of the Indiana Department of Insurance's ("Department's") decision to provide to insurers a voluntary procedure to expedite the filing and timely review of certain exclusions for acts of terrorism. The Department has participated in discussions of this issue with the National Association of Insurance Commissioners ("NAIC"). The members of the NAIC have adopted a resolution that states 'If the Congress adjourns [*the 107th Congress, First Session adjourn sine die*] without enacting federal terrorism legislation, the states should grant conditional approval to commercial lines endorsements that exclude coverage for acts of terrorism consistent with the exclusion framework developed by the Insurance Services Office (ISO). To the extent permitted by state law, such approvals would sunset or be withdrawn 15 business days after the President signs into law a federal backstop to address insurance losses attributed to acts of terrorism, or be subject to other conditions of the approval consistent with state law.' The Department intends to act in a manner consistent with the recommendation from the NAIC membership. The Department believes this to be the best course of action as it balances the needs of insurers to have some certainty related to solvency concerns with the business consumers' concerns that their businesses not be subject to uninsured events.

The Department has received many filings on this issue and has raised objections and concerns about the filings. The Department has completed its review of the following terrorism exclusions filed by the ISO. In order to provide guidance to the insurance industry and provide an expedited filing process this Department will not object to exclusions that are substantially similar to the series of optional endorsements developed by the ISO. These endorsements include the following:

COMMERCIAL PROPERTY INTERLINE ENDORSEMENT: IL 09 41 01 02
(N/A to Standard Fire Policy States)

COMMERCIAL PROPERTY INTERLINE ENDORSEMENT: IL 09 40 01 02
(Applies in Standard Fire Policy States)

COMMERCIAL PROPERTY INTERLINE ENDORSEMENT: IL 09 42 01 02
(Applies in Standard Fire Policy States)

COMMERCIAL GENERAL LIABILITY ENDORSEMENT: CG 21 69 0102

COMMERCIAL GENERAL LIABILITY ENDORSEMENT: CG 31 42 01 02

COMMERCIAL GENERAL LIABILITY ENDORSEMENT: CG 31 43 01 02

COMMERCIAL LIABILITY UMBRELLA ENDORSEMENT: CU 21 29 01 02

BUSINESSOWNERS ENDORSEMENT: BP 05 11 01 02 (N/A to Standard Fire Policy States)

BUSINESSOWNERS ENDORSEMENT: BP 05 12 02 (Applies in Standard Fire Policy States)

BUSINESSOWNERS ENDORSEMENT: BP 05 13 01 02
FARM LIABILITY ENDORSEMENT: FL 10 30 01 02

In an unprecedented move in recognition of the seriousness of the situation, ISO has indicated that it will permit the use of its copyrighted language by any insurer, including one that is not a current licensee of ISO for policy forms. Insurers that are current licensees of ISO for policy forms can use the new language pursuant to their current ISO agreements and filing of its forms with this Department. If an insurer is properly affiliated with ISO, and has given them authorization to file on its behalf, no further action is needed on the insurer's part.

Any insurer that does not have a license agreement in effect with ISO for policy forms is required to execute a short, limited license agreement that authorizes the use of the new language. ISO has indicated that there will be no fee for this limited license. Interested insurers should contact ISO's Customer Service department directly for more information at 1-800-888-4ISO(4476). Insurers may also contact ISO at "info@ISO.com." Insurers will be responsible for assuring compliance with this state's filing requirements and should find the expedited filing process outlined in this bulletin helpful in receiving prompt acknowledgement of their filings.

The Department will accept as filed, without additional questions or requests for information, terrorism exclusions for commercial property and casualty products that comply with this Bulletin and that do not exclude coverage beyond what the ISO endorsements exclude, as summarized below:

- For commercial property insurance coverage, acts of terrorism are excluded only if the acts result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period, unless:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.
 - For commercial liability insurance coverage, acts of terrorism are excluded only if the acts result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period or fifty (50) or more persons sustain death or serious physical injury,
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.
- For purposes of this provision, serious physical injury means:
- Physical injury that involves a substantial risk of death;
 - Protracted and obvious physical disfigurement; or
 - Protracted loss of or impairment of the function of a bodily member or organ.

The Department will also accept the following ISO definition of acts of terrorism, or definitions that are more liberal to policyholders:

Terrorism means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
 - a. Use or threat of force or violence; or
 - b. Commission or threat of a dangerous act; or
 - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
 - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or to express opposition to) a philosophy or ideology.

To receive expedited review of a filing to exclude terrorism from a commercial property and casualty insurance policy the insurer should use this Department's P&C Filing Form and clearly indicate that the insurer is requesting expedited review under this Bulletin. Further, the insurer must certify that it is either using the ISO endorsements or using an endorsement that provides coverage at least as broad as the approved ISO endorsements. Finally, in the interest of fair disclosure of this important issue, the Department directs insurers to provide notice of this exclusion to all affected insureds upon renewal of the policy.

Indiana Department of Insurance
Sally McCarty, Commissioner